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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

LINDA LENNEN, Individually and as the
Mother of DOUGLAS BURTON ONEYEAR,
and as Personal Representative of the Estate
of DOUGLAS BURTON ONEYEAR,
DECEASED,

Plaintiff,

V.

) Civil Action No. 19-CV-41

CITY OF CASPER, WYOMING, CASPER
POLICE DEPARTMENT, WYOMING LAW
ENFORCEMENT ACADEMY, CASPER
POLICE OFFICER JONATHAN SCHLAGER
And CASPER POLICE OFFICER CODY
MEYERS,

Defendants.

INDIVIDUAL DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants, Jonathan Schlager and Cody Meyers, in their individual capacities, by and through the Wyoming Attorney General's Office, hereby file their Answer and Affirmative Defenses to the Plaintiff's First Amended Complaint (ECF Doc. 18).

1. In response to the allegations contained in paragraph 1 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

2. In response to the allegations contained in paragraph 2 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

3. In response to the allegations contained in paragraph 3 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

4. In response to the allegations contained in paragraph 4 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

5. In response to the allegations contained in paragraph 5 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations and assert that the relief sought by the Plaintiff is improper, contrary to law and should be denied.

PARTIES

6. In response to the allegations contained in paragraph 6 of the Plaintiff's First Amended Complaint, the Individual Defendants are without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the same.

7. In response to the allegations contained in paragraph 7 of the Plaintiff's First Amended Complaint, the Individual Defendants admit that they are individuals and police officers with the Casper Police Department. As to the remaining allegations, the Individual Defendants deny the allegations.

8. In response to the allegations contained in paragraph 8 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 8 alleges operative facts as to the Individual Defendants, the Individual Defendants are without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the same.

9. In response to the allegations contained in paragraph 9 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the Academy is not a party to the action, as amended, and also the allegations do not pertain to the Individual Defendants, therefore no response is required. To the extent paragraph 9 alleges operative facts as to the Individual Defendants, the Individual Defendants are without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the same.

10. In response to the allegations contained in paragraph 10 of the Plaintiff's First Amended Complaint, the Individual Defendants are without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the same.

JURISDICTION AND VENUE

11. In response to the allegations contained in paragraph 11 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

12. In response to the allegations contained in paragraph 12 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

FACTS

13. In response to the allegations contained in paragraph 13 of the Plaintiff's First Amended Complaint, the Individual Defendants admit that Douglas Oneyear was at a Loaf and Jug and that he was carrying a sword. The Individual Defendants deny that the sword was a toy. The Individual Defendants are without sufficient knowledge to admit or deny the remaining allegations contained, and therefore deny the same.

14. In response to the allegations contained in paragraph 14 of the Plaintiff's First Amended Complaint, the Individual Defendants admit that Douglas went behind the counter, broke machinery, and frightened the clerk. The Individual Defendants deny that the clerk was unharmed. The Individual Defendants are without sufficient knowledge to admit or deny the remaining allegations, and therefore deny the same.

15. In response to the allegations contained in paragraph 15 of the Plaintiff's First Amended Complaint, the Individual Defendants admit that Douglas was generally near Quail Run, that Officer Meyers pulled his police car partly behind Officer Schlager's car, and that Douglas was in the street and went around the front of Officer Shlager's car. The Individual Defendants deny the remaining allegations.

16. In response to the allegations contained in paragraph 16 of the Plaintiff's First Amended Complaint, the Individual Defendants admit that they fired on Douglas but deny the remaining allegations in the first sentence of paragraph 16. The Individual Defendants are without sufficient knowledge to admit or deny the remaining allegations, and therefore deny the same.

17. In response to the allegations contained in paragraph 17 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

18. In response to the allegations contained in paragraph 18 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 18 alleges operative facts as to the Individual Defendants, the allegations are denied.

19. In response to the allegations contained in paragraph 19 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 19 alleges operative facts as to the Individual Defendants, the allegations are denied.

20. In response to the allegations contained in paragraph 20 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 20 alleges operative facts as to the Individual Defendants, the allegations are denied.

21. In response to the allegations contained in paragraph 21 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

22. In response to the allegations contained in paragraph 22 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

23. In response to the allegations contained in paragraph 23 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

24. In response to the allegations contained in paragraph 24 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

25. In response to the allegations contained in paragraph 25 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

26. In response to the allegations contained in paragraph 26 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

27. In response to the allegations contained in paragraph 27 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 27 alleges operative facts as to the Individual Defendants, the allegations are denied.

EXCESSIVE FORCE BY DEFENDANTS (Individually and in their official capacity)

COUNT I – 42 U.S.C. § 1983

28. In response to the allegations contained in paragraph 28 of the Plaintiff's First Amended Complaint, the Individual Defendants re-state and re-allege each and every response previously set forth. The Individual Defendants deny the remaining allegations.

29. In response to the allegations contained in paragraph 29 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

30. In response to the allegations contained in paragraph 30 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

31. In response to the allegations contained in paragraph 31 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

32. In response to the allegations contained in paragraph 32 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

33. In response to the allegations contained in paragraph 33 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

34. In response to the allegations contained in paragraph 34 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

35. In response to the allegations contained in paragraph 35 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations and assert that the relief sought and requested by the Plaintiff is inappropriate, improper, contrary to law and should be denied.

FAILURE TO TRAIN BY THE CITY OF CASPER AND ACADEMY

COUNT II 42 U.S.C. § 1983

36. In response to the allegations contained in paragraph 36 of the Plaintiff's First Amended Complaint, the Individual Defendants re-state and re-allege each and every response previously set forth.

37. In response to the allegations contained in paragraph 37 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 37 alleges operative facts as to the Individual Defendants, the Individual Defendants admit they were acting under color of law but deny the allegations.

38. In response to the allegations contained in paragraph 38 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 38 alleges operative facts as to the Individual Defendants, the allegations are denied.

39. In response to the allegations contained in paragraph 39 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 39 alleges operative facts as to the Individual Defendants, the allegations are denied.

40. In response to the allegations contained in paragraph 40 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 40 alleges operative facts as to the Individual Defendants, the allegations are denied.

41. In response to the allegations contained in paragraph 41 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 41 alleges operative facts as to the Individual Defendants, the allegations are denied.

42. In response to the allegations contained in paragraph 42 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 42 alleges operative facts as to the Individual Defendants, the allegations are denied.

43. In response to the allegations contained in paragraph 43 and subparagraphs a. through e. of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 43 alleges operative facts as to the Individual Defendants, the allegations are denied.

44. In response to the allegations contained in paragraph 44 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 44 alleges operative facts as to the Individual Defendants, the allegations are denied.

45. In response to the allegations contained in paragraph 45 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the allegations do not pertain to the Individual Defendants and therefore no response is required. To the extent paragraph 45 alleges operative facts as to the Individual Defendants, the allegations are denied.

WRONGFUL DEATH

46. In response to the allegations contained in paragraph 46 of the Plaintiff's First Amended Complaint, the Individual Defendants re-state and re-allege each and every response previously set forth.

47. In response to the allegations contained in paragraph 47 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

48. In response to the allegations contained in paragraph 48 of the Plaintiff's First Amended Complaint, the Individual Defendants assert that the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the Individual Defendants deny the allegations.

49. In response to the allegations contained in paragraph 49 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations.

DAMAGES ALL DEFENDANTS

50. In response to the allegations contained in paragraph 50 and its subparagraphs a. through l. of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations and assert that the relief sought and requested by the Plaintiff is inappropriate, improper, contrary to law and should therefore be denied.

51. In response to the allegations contained in paragraph 51 of the Plaintiff's First Amended Complaint, the Individual Defendants deny the allegations and assert that the relief sought and requested by the Plaintiff is inappropriate, improper, contrary to law and should therefore be denied.

COSTS AND ATTORNEY FEES

52. In response to the allegations contained in paragraph 52 of the Plaintiff's First Amended Complaint, the Individual Defendants re-state and re-allege each and every response previously set forth and deny the allegations and assert that the relief sought and requested by the Plaintiff is inappropriate, improper, contrary to law and should therefore be denied.

JOINT AND SEVERAL LIABILITY

53. In response to the allegations contained in paragraph 53 of the Plaintiff's First Amended Complaint, the Individual Defendants re-state and re-allege each and every response previously set forth, and deny the allegations, and assert that the relief sought and requested by the Plaintiff is inappropriate, improper, contrary to law and should therefore be denied.

AFFIRMATIVE DEFENSES

1. Any allegations not specifically admitted here are denied.
2. The Individual Defendants are immune from suit under federal and state law, on the basis of qualified immunity, "good faith" qualified immunity, and under the Wyoming Governmental Claims Act.
3. To the extent immunity is waived, any waiver is limited under the Wyoming Governmental Claims Act.
4. Plaintiff has failed to comply with the Wyoming Governmental Claims Act, Wyo. Stat. Ann. §§ 1-39-101, *et seq.* by not presenting a notice of claim, with an itemized statement of compensation demanded, to the general services division of the department of administration and information. Instead, an alleged claim was sent to the Wyoming Law Enforcement Academy, and demanded an uncertain amount of compensation (\$1,000,000+).
5. To the extent Plaintiff's First Amended Complaint alleges that 42 U.S.C. § 1988 provides for a separate claim for fees apart from any finding of liability under § 1983, Plaintiff's claim fails, as § 1988 does not provide such relief.

6. To the extent Plaintiff seeks punitive damage against the Individual Defendants, their claim violates the Fifth and Fourteenth Amendments to the United States Constitution, and the claim for punitive damages is also are barred by Wyoming law.

7. Plaintiff has alleged no facts supporting a claim for punitive damages, and their request for punitive damages is inappropriate, improper, and contrary to law.

8. Any acts or omissions by the Individual Defendants as to this matter were privileged, authorized by law, and reasonable in light of the applicable standards, their training, and the totality of the circumstances.

9. Any acts or omissions by the Individual Defendants as to this matter were done in good faith and based upon good cause, consistent with federal and Wyoming law.

10. Any acts or omissions by the Individual Defendants here were not the proximate cause of Plaintiff's injuries.

11. The Individual Defendants are not, as a matter of law, vicariously liable for any conduct of one individual defendant.

12. Plaintiff's First Amended Complaint fails to state a claim upon which relief may be granted.

13. The Individual Defendants respectfully reserve the right to assert additional affirmative defenses as further investigation and discovery warrant.

WHEREFORE, the Individual Defendants respectfully request that the Plaintiff's First Amended Complaint and the claims for relief stated therein be dismissed with prejudice, that Individual Defendants be allowed their costs, including reasonable attorney fees, and other relief as the Court deems equitable and appropriate.

DATED this 25th day of April 2019.

/s/ Justin A. Daraie
Justin A. Daraie [WSB No. 7-4690]
Senior Assistant Attorney General

/s/ Adrian K. Kowalski
Adrian K. Kowalski [WSB No. 7-6125]
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served this 25th day of April 2019, by the following means:

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/s/ Heather L. Hunter
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